UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/697,994	10/26/2000	Dawn C. Maurer	RATLP005C1	7430

26541	7590	03/31/2004

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EXAMINER
ELISCA, PIERRE E

ART UNIT	PAPER NUMBER
3621	

DATE MAILED: 03/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _01 February 2004_.
2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _30-46_ is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) _30-46_ is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a) ☐ All   b) ☐ Some * c) ☐ None of:
      1. ☐ Certified copies of the priority documents have been received.
      2. ☐ Certified copies of the priority documents have been received in Application No. _____.
      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1.   This Office action is in response to Applicant's Response, filed on 2/1/2004.

2.   Claims 30-46 are pending.

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for

all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4.   Claims 30-46 are rejected under 35 U.S.C. 102 (e) as being unpatentable

over Rodrigues et al. (U.S. pat. No. 6,408,403) in view of Warfield (U.S. pat. No.

5,754,760).

As per claim 30-39, Rodrigues substantially discloses a computer operable for

integrating and automating test procedures within a computer application program. The

test operation objects are instantiated by calls to functions in a test operation runtime

(which is readable as Applicant's claimed invention wherein it is stated that a method of

producing scripts for load testing a software application), comprising:

capturing call on a computer system to emulate a user (see., abstract, col 8, lines 1-59);

recording timing information of the captured calls (see., col 9, lines 13-20, specifically wherein it is stated that automated testing to be performed at any time in the application program development lifecycle or timing information);

captured calls to emulate the user (see., abstract, col 3, lines 28-67, col 8, lines 30-59, col 7, lines 3-25). It is to be noted that Rodrigues fails to explicitly disclose the step of generating a script from the captured application. However, Warfield discloses a test software module that uses a genetic algorithm to generate a best test script. The generic algorithm creates populations of test scripts from the test cases, in which each test script includes a number of test cases (see., abstract, col 1, lines 13-65, col 3, lines 18-65, col 4, lines 5-65). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the automated software testing of Rodrigues by including the limitation detailed above as taught by Warfield because such modification would provide an integrated, automated solution to the processes of designing, coding, and debugging tests.

As per claims 40-46, Rodrigues discloses a computer operable for integrating and automating test procedures within a computer application program. The test operation objects are instantiated by calls to functions in a test operation runtime (which is readable as Applicant's claimed invention wherein it is stated that a method of producing scripts for load testing a software application), comprising:

computer code that captures call on a computer system to emulate a user (see., abstract, col 8, lines 1-59);

computer code that records timing information of the captured calls (see., col 9, lines 13-20, specifically wherein it is stated that automated testing to be performed at any time in the application program development lifecycle or timing information);

computer code that captured calls to emulate the user (see., abstract, col 3, lines 28-67, col 8, lines 30-59, col 7, lines 3-25). It is to be noted that Rodrigues fails to explicitly disclose the step of generating a script from the captured application. However, Warfield discloses a test software module that uses a genetic algorithm to generate a best test script. The generic algorithm creates populations of test scripts from the test cases, in which each test script includes a number of test cases (see., abstract, col 1, lines 13-65, col 3, lines 18-65, col 4, lines 5-65). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the automated software testing of Rodrigues by including the limitation detailed above as taught by Warfield because such modification would provide an integrated, automated solution to the processes of designing, coding, and debugging tests.

RESPONSE TO ARGUMENTS

5.   Applicant's arguments filed on 12/20/2002 have been fully considered but they are moot in view of new ground (s) of rejection.

Conclusion

6.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pierre E. Elisca whose telephone number is 703 305-3987. The examiner can normally be reached on 6:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 703 305-9769. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pierre Eddy Elisca

Primary Patent Examiner

March 21, 2004